## REMARKS

This paper responds to a Notice of Non-Compliant Amendment dated September 21, 2007. The Examiner has noted that Applicant's Response to an Office Action dated March 22, 2007 contains misclassified identifiers for amended claims 14 and 15. Applicant has changed those identifiers from "withdrawn" to "canceled," and incorporates the arguments stated in the aforementioned Response.

As set forth in the Non-Compliant Amendment, claims 1-4, 8, 9, and 19-24 were previously withdrawn from consideration. In this amendment and response, applicant hereby cancels claims 14 and 15 from consideration without prejudice to their presentation in subsequent continuation and/or divisional applications. Claim 18 has been amended to delete its dependence upon now canceled claims 14 and 15.

### Claim Rejections

### Section 112 Rejection

Claims 14 and 15 have been rejected again under 35 USC § 112 second paragraph, as allegedly indefinite, as the terms "chamois" and "terry" are alleged to modify the microfiber structure rather than the fabric layer itself. Since applicant has canceled these claims without prejudice to their presentation in a subsequent continuation and/or divisional application, this rejection is now moot.

### Section 103 Rejections

#### 1. Demott Combined With Goldberg

Claims 5-7 and 10-18 have been rejected under 35 U.S.C. § 103 as allegedly obvious in view of DeMott et al. (USPN 6,770,581) (hereinafter referred to as "DeMott") in view of Goldberg et al. (US Pat. Pub. No. 2005/0044650 A1)("Goldberg."). The Examiner asserts that DeMott et al. teaches all of the requirements of these claims *except* the split microfiber with grooves or channels. The Examiner alleges that Goldberg discloses split microfibers, and

therefore, it would have been obvious to substitute the split microfibers as taught by Goldberg in the absorption layer of DeMott to obtain the claimed structure.

In response, applicant submits that Goldberg is *not* prior art to the present invention, and is therefore unavailable to the Examiner to use in the cited obviousness combination. Since Goldberg is not available as prior art, the rejection must be withdrawn.

Applicant notes that the Examiner has not provided a statutory basis for designating Goldberg as prior art to the present invention. The present application was filed in the United States Patent and Trademark Office on September 27, 2003. The cited Goldberg reference has a publication date of March 3, 2005. Therefore, Goldberg does not qualify as prior art under either 35 U.S.C. §§ 102(a) or 102(b) because the Goldberg publication date is long after the September 27, 2003 filing date of the present application.

Under the version of 35 USC § 102(e)(1) extant at the time that the present application was filed, a U.S. patent application that was filed in the U.S. *before the invention by the applicant for patent*, and published (at any time) under 35 USC § 122(b), is prior art under § 102(e)(1). Applying this statute to the case at hand, Goldberg was filed on August 29, 2003, and thereafter published on March 3, 2005, pursuant to § 122(b). If applicant merely relies upon the filing date of the present application (September 27, 2003) as the date of his invention, then Goldberg qualifies as prior art under 35 USC § 102(e)(1).

However, applicant submits herewith a Rule 131 declaration from the applicant Daniel Katsin in which he establishes a date of invention no later than July 22, 2003. While this July date is not the earliest date upon which applicant can demonstrate conception and reduction to practice, this July 2003 date is sufficient to show that the applicant had completed the invention before Goldberg's August 29, 2003 filing date in the United States. Consequently, Goldberg is not prior art to this application under § 102(e)(1), and the DeMott/Goldberg rejection of record fails and must be withdrawn.

Since Goldberg is not available as prior art to the present application, applicant does not address the substance of the rejection or otherwise respond to the Examiner's assertions about Goldberg or the combination of Goldberg and DeMott.

2. Demott Combined With Keck

The Examiner has also rejected claims 5-7 and 10-18 as unpatentable under 35 USC § 103 over Demott combined with Keck et al. (U.S. Pat. Pub. No. 2003/0106568 A1)("Keck.") The Examiner contends that DeMott's omission of split microfibers with furrows and channels is cured by Keck's disclosure of multilobal multicomponent microfibers as set forth specifically in Paragraphs 0029 and 0062. Applicant respectfully traverses this rejection. Keck does not disclose split microfibers with furrows and channels on the surface of the microfibers. Moreover, the cited combination of DeMott and Keck is inappropriate because Paragraph 0062 does not include any indication that Keck recognized the advantages in sorption/wicking and cleaning that result from split microfibers with furrows and channels on the surface.

In the portion of the specification cited by the Examiner, Keck discloses the use of multilobal fibers with well-defined shapes (Fig. 1.) Keck also discloses that the microfibers are multicomponent microfibers. When fibers of this composition and this cross-section are "split" according to the techniques described in Keck, the result is microfibers of different, but still well-defined, shapes. The resulting fibers *could* have furrows and channels but Keck does not expressly teach or discuss the presence of furrows or channels on the surfaces of the multicomponent, multilobal fibers after they have been split. The absence of these surface features on the Keck split microfibers, plus Keck's failure to recognize whether there was any contribution of the irregular surface features to the absorption of liquid, establishes that the Keck reference does not cure the acknowledged deficiencies of DeMott.

Keck appears to have approached the problem of moisture wicking in a different way. In Keck, the feature resulting from splitting that would be divided or split versions of the original multilobular shapes. This difference in resulting morphology has an important impact upon the target characteristics – moisture wicking and absorbency. When microfibers of highly regular cross sections are packed into a volume, as they would be in a layer in the Keck products, they pack more densely and uniformly because of the regular shapes. This is true when you start with the regularly shaped fibers in Fig. 1, or when you start with "split" microfibers obtained by treating the regularly shaped fibers in Fig. 1. The statistically significant uniformity of shape leads to uniform packing characteristics, which do not provide the type of void space that enhances the wicking/absorbency of the composite material. While Keck did teach splitting the regularly shaped lobes, Keck did not identify the morphology of the split multilobes as

contributing to moisture wicking. Keck does not disclose or suggest that the resulting "split" microfibers will have channels or furrows nor is it disclosed that such split microfibers have desirable moisture-absorbing and wicking properties. It is mere speculation whether the Keck microfibers when split would have the claimed furrows and channels, and it not express that such split microfibers with channels and furrows would have the desired characteristics. Since Keck recites so many other advantages, it is a fair inference that the moisture-absorbency characteristic was not known or appreciated.

In contrast, when split microfibers with furrows and channels on their surfaces, as claimed in the present invention, are packed, there is an inherent randomness to the cross-sections of the split microfibers that leads to more random packing which in turn leads to greater wicking/absorbency of the composite material. It is a difference with a distinction, making the teaching of Keck unavailing to remedy the admitted deficiencies of DeMott..

In summary, Keck does not teach split microfibers with furrows or channels. Therefore, Keck does not cure the admitted deficiency of DeMott – the absence of split microfibers with furrows or channels.

The Examiner's rejection based upon DeMott in combination with Keck must also fail because Keck does not teach that the split microfibers are liquid absorbent or liquid retaining.

Comments Concerning DeMott

Applicant notes that the previous amendment and response overcame the rejection of the claims under 35 USC Section 102 in view of DeMott. Applicant admits that there were some technical errors in the Rule 132 declaration, but submits that in view of the previous claim amendment and the subsequent removal of the rejection based upon DeMott alone, there is no reason or need to correct any of the technical errors made in the Rule132 declaration. The Examiner simply did not find the declaration sufficient to overcome the citation of DeMott. The declaration is not being urged to support any argument put forward in the present amendment and response concerning the present Office Action.

## Conclusion

In view of the reasons and amendment presented above, applicant submits that the pending claims are in condition for allowance. The claims now recite physical structure not found in the cited prior art. The split microfibers of the present invention contain surface irregularities not present in DeMott, and which are not provided by the microfibers in Keck. Reconsideration and allowance of these claims is respectfully requested.

Respectfully submitted,
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